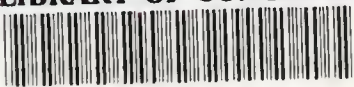


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PRINCIPLES, ACTS, AND UTTERANCES
OF JOHN C. CALHOUN, PROMOTIVE OF
THE TRUE UNION OF THE STATES.



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1893

By

The Hon. J. L. M. CURRY, LL.D.
Washington, D. C.

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PRINCIPLES, UTTERANCES, AND ACTS OF
JOHN C. CALHOUN, PROMOTIVE OF THE
TRUE UNION OF THE STATES.*

BY THE HON. J. L. M. CURRY, LL.D.,
Washington, D. C.

I.

Of all days, apart from those commemorative of events connected with our Christian religion, the Fourth of July is most significant. One English writer calls it a red-letter day for Englishmen as well as for Americans. Morley speaks of our revolutionary attitude of 1776 as a necessary step in the development of British liberty. It is epochal in the history of human freedom, and, under present circumstances,† it is peculiarly fit to revive the celebration with all its inspiring memories. North Carolina, Virginia, and Massachusetts may be chiefly entitled to the honor of its origination, of conducting "the mighty preliminary argument of the Revolution," but all the thirteen states concurred in the Declaration, which was not a legislative act, conferring power, making a government, creating the Union, but it was a pivotal event, and, as a result of renunciation of allegiance to Great Britain, every colony became free, sovereign and independent possessing, not what the government of Great Britain may have possessed, but each one, every and all the rights pertaining to sovereignty. As lately belligerent sections are now blended in national patriotism, in courage, in readiness to make all needful sacrifices for

* An address delivered before the University of Chicago on Independence Day, July 4, 1898.

† See *Atlantic Monthly*, July 18, 1898, for an interesting discussion of the advantage to English liberty from the severance.

the glory of a common flag, it is most appropriate and important to cement these fresh ties into enduring brotherhood and go back to first principles, and study with unprejudiced and receptive diligence what brought the colonies into Federal Union, and what will make the alliance a perpetual blessing. Cruellest public opinion has placed under ban some of these principles and their advocates, and there was never a stronger obligation on universities to teach the truths of republican liberty or "the art of applying them" to practical government. Conscious that I undertake a difficult task, but emboldened by the assurance of President Harper that this university is for the investigation of truth and challenges the boldest discussion, I set myself to the task of demonstrating that John C. Calhoun, in conviction, creed and conduct, was a true and devoted friend of the Union of our fathers, and that his policy and principles, adopted in public opinion and applied in practice, in executive, legislative, and judicial departments of the government, would be the best guarantee of constitutional liberty, of the permanence of our complex and well-guarded systems, and of the peace and happiness of the people. His political course, instead of being hostile to the Union, was the best auxiliary and surest promoter of its original end and purpose, and its integrity was the paramount object of his ambition and efforts.

II.

Let us ascertain the meaning of terms. A clear definition will rid discussion of much that is irrelevant and confusing. Some make the Union a fetish, an idol, and pæans to its glory, cries of "Union, Union, the glorious Union." are substitutes for arguments and facts, and become spells of the enchantress to exorcise demons. Some habitually speak of it as a personality, or, in itself, a self-existing government, make a profession of attachment the shibboleth for determining loyalty and a cover or excuse for any injustice or wrong. It has elicited rhetoric and poetry

and some of the most eloquent periods in the English language, but we have need to go beneath words, however beautiful and thrilling, remembering that rhetoric and history are two very different things, and that "gush sometimes verges dangerously on falsehood." The Union is a creation, a result. We know the creators. We can fix the day of its coming into existence. The ratification of the Constitution by the States made it, and prior to 1789 it was only a dream, an expectation, a hope. To predicate Union, with present meaning, on the condition of things antecedent to that year, is a gross historical solecism. We bless God for the Constitutional Union. We recognize it as full of dignity, honor, and inspiration, as the source of incalculable blessings, and we adopt, as our creed, the striking phrase of Chief Justice Chase, "an indissoluble union of indestructible states." Let us cherish a reverential attachment to our written Constitution as the palladium of American liberty, the truest security of the Union, the only solid basis for the public liberties, the substantial prosperity, and the permanence of our representative Federal Republic.

Let us look at the Union in the light of historical truth. Apart from the Constitution it is a myth, an unembodied abstraction. The Union is a federation of states, compacted, vivified, held together, having its being, its authority, solely in the breath of the Constitution. Destroy the Constitution and the Union perishes instantaneously, without heir or descendant. It is the grossest error to liken it to governments which derive their power from tradition, from usage, from presumption. The Union has no original, inherent powers, none by virtue of the fact that it is a government. Every power, every function, is derivative.*

* In the case of *Martin vs. Hunter's Lessee* (1 Wheaton, 326), Chief Justice Marshall laid down the rule as follows: "The Government of the United States can claim no powers which are not granted to it by the Constitution; and the powers actually granted must be such as are expressly given, or given by necessary implication."

What the states did not grant nor surrender, the general government, the Union, does not possess. cannot usurp. Before powers were "delegated," there were no powers in the United States; in fact, no United States existed.

There is so much misapprehension on this subject that I must crave indulgence for expansion. The facts are few and not difficult of ascertainment if sought and considered without prejudgment. The Union is the consequence of a political partnership, the terms and conditions of which are embodied in the Constitution. As a government it is not absolute, nor in all matters supreme, but is one of well-defined grants, of carefully imposed limitations and restrictions. When a question arises, a measure is proposed, a course of action is suggested, the reference is to a written instrument, and not to prescription or scattered statutes which have not been classified into a coherent whole. One need not suppose nor fear that a great residuary mass of power and obligations is non-existent or floating in limbo. If not granted and recorded in the Constitution, nor prohibited to the states, they are in the states, or the people of the states, most precautionously preserved. The Union is partial. For some civil purposes it exists; for some, it does not. For some purposes, as war, treaties, relations with foreign powers, imposts, naturalization, coinage, copyrights, post office, etc.—purposes great in importance, unlimited in degree, but very limited in number—there can be no question as to its supremacy, its plenary powers, its sole and undivided responsibility. That laws *made in pursuance* of the Constitution are the supreme laws of the land, nobody questions. The contention begins back of this. Who is the final arbiter to determine what laws are in pursuance of the Constitution? Within the limits of the granted powers the states are united; without those limits, as in matters of religion, bearing arms, right to a speedy public trial, and as to all powers not delegated by the Constitution, nor prohibited by

it to the states, the states are as disunited, as separate from the central government, as that government is from Great Britain, and these great rights are left for recognition, protection and security to the states which have sole and exclusive jurisdiction over them. In these reserved powers are embraced the protection and security of life, liberty and property, the unrestricted power to determine what these rights are, their extent and limit, and all the processes of law for their vindication; also, all jurisdiction over the conduct of men, the conservation of morals, the preservation of the public health, and the entire power over all contracts, all property situated within the borders of the state, over schools, colleges, and universities, over marriage, over the relative rights, duties, and powers of husband and wife, parent and child, teacher and pupil, employer and employed. The state authority meets the child at his birth, attends him through infancy, manhood and old age, and, through the free exercise of his religious belief, secures an opportunity to gain a blissful hereafter.*

III.

How was this Union, or the Federal Government, made? Prior to the Revolution the states formed distinct colonies, as distinct, said Dr. Small, as though created by different sovereignties, and in their separate colonial assemblies the grievances which exasperated the people were discussed, and the steps

*In the case of *Collector vs. Day* (11 Wallace) the Federal court undertook to define the relative rights of States and of the Federal Government. The Court said: "The General Government and the States, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other within their respective spheres. The former within its appropriate sphere is supreme, but the States within the limits of their powers not granted, or, in the language of the tenth amendment, 'reserved,' are as independent of the General Government as that Government, within its sphere, is independent of the States . . . In respect to the reserved powers the State is as sovereign and independent as the General Government."

looking to resistance and reparation were adopted.* These distinct colonies were politically united only through the British Crown, the inhabitants being amenable to British law, with rights of common citizenship in any part of the British realm, and, except as to geographical proximity, were as separate as Canada and New South Wales. In all movements against the encroachments of the mother country they acted as distinct political communities, and not as individuals, nor as an aggregate people. In the Declaration of Independence they proclaimed themselves free and independent states, and the treaty of peace, by name and enumeration, recognized them as such. "In that character they formed the old confederation, and when it was proposed to supersede the articles of the confederation by the present Constitution, they met in convention as states, acted and voted as states, and the Constitution, when formed, was submitted for ratification to the people of the several states. It was ratified by them as states, each state for itself; each by its ratification binding its own citizens; the parts thus separately binding themselves, and not the whole the parts." These indisputable facts show that the Constitution and the resulting Union are the work of the people of the states, acting as separate political communities. Their power created it, clothed it with authority, and the Union, of which the Constitution is the bond, was the union of states and not of individuals. The people of the United States, as individuals or in the aggregate, never performed a single act in connection with the making or the ratification of the Constitution, and, from that day to this, have never performed an act as a nation or as one people. This notion of a universal democracy, of the people, collectively, acting as a unit, apart from orderly, legal procedure, prescribed antecedent forms,

* See *Atlantic Monthly*, July 1898, for a discussion of the salutary influence of colonial dependence for the first century and a half.

or otherwise than through state organisms, is modern, is Dorrisism, is mobocracy. The Constitution, as the written fundamental law, is such because adopted by the concurrent ratification of conventions of the preëxisting states. Each state had antecedently a written constitution of its own establishment, "an efficient government of its own," says Cabot Lodge, and the effect of the new Constitution was to make a division of power between the admitted sovereignty of the states and the authority of the new Federal Government. Mr. Jefferson said, the relations of the states and the Federal Government were not correctly understood by foreigners. "They suppose the former are subordinate to the latter. This is not the case. They are coördinate departments of one simple and integral whole." The Federal Constitution is not the whole of government; it is only a fragment, incomplete and unintelligible, taken alone. "The Constitution of the United States, with the government it created, is truly and strictly the constitution of each state, as much so as its own particular constitution and government, ratified by the same authority, in the same mode, and having, as far as its citizens are concerned, its powers and obligations from the same source." The constitutions of the several states are an indispensable complement of the Federal Constitution. The Federal Constitution and state constitutions are complements, the one of the other, and, within the limits and jurisdiction of the states, both are the constitution of the states. A government with no other powers than those granted in the Federal Constitution would be an abortion; a government, considered as a whole, with no other powers than those reserved by the states, would be powerless outside its own territorial domain and wholly inefficient in many important respects within. That the Federal Government is absolute, and has unlimited scope of action, is a political monstrosity, diametrically in contravention with the wisdom and purposes of its founders. The convention of 1787 and

the Constitution had a double object in view — *first*, to create a common government, a national government, showing to foreign countries a united people with ample powers of self-government and self-protection, and, *secondly*, at the same time, to maintain the independence of the separate states which, through the Federal organization, had endowed the Federal Government with powers deducted from the sovereignty of the states. In the process of the formation of the Federal Government there was no arrogated superiority, no assumed mastery, of the states, nor any distrust of their faith or ability. The states, by an unusual act of self-abnegation, created a superior authority for defined purposes, but they still lived their own separate life, with vast and beneficial powers in their own hands, correlated with the federal powers they had surrendered. State rights are not abstract nor indeterminate rights; they are actively practical, essential to liberty and good government, and comprise great muniments of freedom. The refusal to concede many rights, the adoption of twelve amendments out of the 124 proposed by the states at the time of their ratification, were to limit the Federal Government in its possible powers and render it incompetent to usurp what the states had reserved for their own exclusive control and protection. From this history of the adoption of the Constitution and these early amendments, the inference is irresistible that the purpose was to form a general government of limited powers and to preserve and guarantee the equality and the reserved rights of the separate states. The contention of some that the states by accepting the Constitution fused themselves thereby into a nation, is a wholly illogical inference, contrary to facts, and not deducible from the premises, even if no amendments in restraint of federal power, or to supply defects of the original instrument, had been adopted. With the Tenth Amendment such a theory is absolutely irreconcilable. The logical effect of the Constitution was that the states should retain

their undelegated powers, but, out of abundant caution and jealousy of the central government, it was deemed wise to have a specific amendment to that effect. Massachusetts proposed it; New Hampshire, Virginia, North Carolina, and South Carolina concurred, and Madison included it in his series of amendments proposed to the First Congress. The language, "to the states respectively or to the people," is the demonstration that the reservation was to the several states and to the people in their separate character, and not to the whole as only one people or nation. That the powers of government are trust powers, delegated, not absolutely transferred, could not be more clearly and explicitly stated than has been done in that article.

IV.

It cannot now be difficult to decide who have been, and are, the truest friends, the real preservers, of the Union. Obviously and necessarily those who conserve the true spirit and end of the Union and of the instrument which made it. The action of the government or of any of its departments, denying the legitimate supremacy of the states as the constitution-making power, is a rebellion of the creature against the creator, a profane denial of the source of the life and being of the Congress and the other departments. The fathers were never guilty of the folly and madness of intrusting absolutism over the property, lives, and liberties of the people to irresponsible power. They had a vigilant care over popular liberty, the dignity, equality, and rights of the states, and with prophetic prevision were jealous of centralism. The true friend of them and of their work is he who regards with just apprehension and resists with vigor a subversion of the relation of the Federal Government to the states, and all attempts, direct or furtive, to substitute consolidation in lieu of the federative plan which they established. The Union being an instrumentality to accomplish certain specified ends, he is an enemy who perverts it from its original purpose.

and he is the true friend who keeps it within prescribed metes and bounds, who preserves the original intact, who resists and defeats all infractions, and no man abstained more carefully than Calhoun from violations of the Constitution or was more forward to arrest them. A change in the Constitution, made irregularly, without due authority, is a disruption of the original Union, and, strange to say, those who have made and who advocate the perversion have arrogated the rôle of defenders and resorted to the old cry of "Stop thief!" to divert attention from their own criminality.

V.

These preliminary statements enable us to discuss more intelligently the proposition that Calhoun, in theory of government, in inmost purpose, in depth of conviction, in political action, was the truest friend of the Union. Webster, his great antagonist, spoke of him as "a historical character," connecting himself successfully and honorably, for all time, with the records of his country. He came of that sturdy Scotch-Irish immigration which settled the Piedmont region from Virginia to Georgia—the stock of men who impressed themselves indelibly and beneficently upon American character and institutions. Alexander, Jack, Preston, Pickens, Rutledge, Jackson, Polk, Houston, Calhoun, the commonwealth builders, were possessed of industry, thrift, integrity, courage, conscience, obstinacy, adherence to principle, capacity for command. With the rugged honesty and fearlessness of John Knox, an acutely analytical and metaphysical mind, Scotch relish for general principles and abstract truths, Calhoun pursued truth with indomitable will and unswerving devotion, and his speeches were ignited logic, the embodiments of his own moral and mental characteristics. His great opponent said there was no way of coping with him except by denying his premises. His speeches are such demonstrations that *Q. E. D.* may be written at the end of them. Aris-

totle's reproach of Plato was "This is to talk poetic metaphor." I recall only one line of poetical quotation in all his productions. "Truth crushed to earth will rise again." Adopting after intense study the exposition of the Constitution and the theory of our government, set forth in the Virginia resolutions and the luminous report thereon, and in the Kentucky resolutions, he was permeated by these principles, and they illustrate his whole political life from his vice presidency until his death. His volume on the *Government and Constitution of the United States* is seldom read by his defamers, but it places him as a publicist on a plane with Aristotle.*

Seeing Calhoun in the light of what has been said, one cannot fail to accept the statement that he was preëminently, almost idolatrously, a friend of the Union of the Constitution, not of a Union of subordinate colonies, of dependent provinces, of a vast multitude of individuals, but of coequal states. No heart beat more warmly, no one was readier to make sacrifices for the Union, whose element was the Constitution, no statesman more clearly, more vividly, appreciated its beauty, its value, its glory. Entering public life in early manhood, the one pole star by which his path was guided, which in its pervasive influence thrilled him in every fiber of his being, was the honor of the whole country. The war of 1812 was the second war of independence. When free for the moment from Napoleon, England turned her whole power upon us. Through press, pulpit and legislation, New England opposed the war, assailed the credit of the government, embarrassed all financial operations, gave aid and comfort to the enemy and conspired to withdraw from the Union. Calhoun, with the boldness of the bravest and the sagacity of the wisest,

*Carlyle had small love for Gladstone and criticised with severity the great Liberal leader. A friend, in gentle protest, ventured to ask Carlyle if he did not remember a concurrence of ideas on a certain point. "Remember!" said Carlyle with disgust. "Do you think I ever read his speeches? I have never read a word of them!" — *July Review of Reviews*, p. 65.

championed resistance, and saw our country glorious in victory by sea and by land — symbols and prophecy of what sailors and soldiers are now achieving, to the joy of all hearts, over a people whose national history, in both hemispheres, has been marked by atrocious slaughterings of men and women because they demanded civil and religious freedom. The national exigency diverted the attention of Congress from our internal to our external relations, and on such occasions the powers of government are strained. Under pressure of the safety of the republic, or of supposed military necessity, there is an irresistible tendency to loose views of interpretation and to dangerous expedients. It is foreign to my purpose to speak of Calhoun's views on various questions, or to try to vindicate his consistency — no mortal is wise at all hours — but I may say, from the beginning to the end of his life, his predominant object was to restore our government to its original purity and to keep it within the simple duties indicated by the Constitution. He once said "for many a long year I have aspired to do my duty, under all circumstances, in every trial, irrespective of parties, and without regard to friendships or enmities, but simply in reference to the prosperity of the country." Infractions of the Constitution he dreaded, deplored, as a chivalrous man a stain upon his honor. Heroically, without thought of self, he flung himself at all times betwixt the object of his worship and the mailed, the traitorous, hand that would strike it down. This appreciation and love made him shut his eyes to the rewards and honors ambition held before him, his ears to the blandishments and siren songs of power, and, standing on the threshold of the highest position in the government, he resolutely cut loose from the party which honored and cherished him as a prince and a leader, and began a career, paved with thorns and sharp stones, rejecting ease and place, and entering upon an embittered warfare in which prejudice, interest and sectionalism, were arrayed against him. His struggle was to

reinstate the Constitution in its original supremacy over the Congress and the executive. He made a broad and just distinction between a legislature, enacting statutes, and a convention, the embodied sovereignty of the people, ordaining an organic law. He distinguished sharply between a territory and a state, between "inhabitants" and "people," between a half-naturalized alien and a complete American citizen, the highest title of a free man. With intellectual contempt and superlative scorn, he rejected the modern notion that our governments, state or federal, are a democracy, and he held that action by a population *en masse*, or by Congress outside, without, contrary to, prescribed forms and explicit grants, was usurpation, indistinguishable from mobocracy and despotism.

As a result of the discrimination of the Missouri Compromise, immigration, slavery, unequal expenditure for the benefit of a favored section of the country, the concentration of exchanges through the control of the government funds at the North, thus making it the center and heart of the financial system of the Union, the North acquired a dominant population and a preponderance of political power in the Federal legislature. This superiority was exerted, without stint or conscience, in a selfish use over the taxing power and the national expenditures. The tariff acts of 1818 and 1824 were enacted to encourage and protect manufactures, while millions of the public treasure were disproportionately expended for improvements. The tariff of 1832 deserves the ignominy of "the bill of abominations," for so exorbitant were its exactions that out of an import of \$64,000,000, it carried \$32,000,000 into the treasury. It now became manifest that the powers of the government could be so perverted by usurpation and loose construction of the Constitution as to oppress and impoverish one section for the benefit of another. Here were developed the province and duty of the statesman, regardless of personal results, to point out the errors of the government, the false constructions of the Constitution, the perils to

the Union. and to propose the best remedies of which the system was capable. This had been Calhoun's life-long object ; for this he lived and labored. and to this, his last thoughts and dying energies were consecrated.* Protests against the tariff were made in all parts of the South. Mr. Calhoun said "He who earns the money, who digs it from the earth with the sweat of his brow, has a just title to it against the universe. No one has a right to touch it without his consent, except his government, and the latter only to the extent of its legitimate wants; to take more is robbery." In December 1828, the legislature of South Carolina adopted an exposition, drawn by Calhoun, in which the whole subject of the tariff and the relations of the state and general government was elaborately discussed with consummate ability. The paper laid bare the oppressiveness and unconstitutionality of the legislation of Congress, the danger to constitutional liberty and free institutions, and suggested, as the ultimate remedy, the right of the state, in the last resort, to interpose her veto or nullification against the execution of the law within her limits.

It was not the judgment of Calhoun that the remedy should be immediately applied, as he preferred to wait and see if, through General Jackson's great influence, the protective system and its most objectionable cognate measures might not be broken up. The first message removed every doubt of the President's policy and showed that, under malign influences, he meant to throw the weight of his administration against relief from mischievous legislation and the consequent perils to the constitutional Union. Consequently, a convention was called in Carolina, and the acts of 1828 and 1832, imposing duties, were solemnly declared void and of no effect in the state. Congress soon passed the Force Bill, an ineffaceable record of the subserviency of the American Congress, which, in turn, was immedi-

* His dying aspiration, "O for one hour in the senate!" was that that hour might be devoted to the preservation of the Union of the fathers.

ately nullified by the gallant state. In the meantime, a compromise bill, proposed by Clay, was passed by Congress and accepted by Calhoun and his colleagues. Single-handed, the state of Marion and Pickens, Rutledge and Pinckney, Lowndes and Cheves, Hayne and Calhoun, extorted from an arrogant majority all which she demanded. A slanderous falsification alleges that Calhoun yielded because Jackson threatened to hang him. Let Professor von Holst, by no means a partial judge of Calhoun, answer: "If either had a right to claim the victory, it was certainly not Jackson and the majority in Congress, but Calhoun and South Carolina." In 1842, another tariff act was passed, in flagrant violation of the Compromise of 1833, for which a deceptive justification was prepared by a distribution of a portion of the revenue and by most prodigal appropriations. A strenuous effort was made to excite state interposition a second time, but Calhoun resisted because he was so attached to the Union, and was averse to putting it to hazard while there existed a reasonable hope of redress by other and less drastic measures, and because of his hope and expectation, fortunately realized, that the approaching presidential election would bring into power a more constitutional party. Closing his masterly speech on the tariff in 1842, his clarion voice rang out in cheerful tones. "The great popular party is already rallied, almost *en masse*, around the banner which is leading the party to its final triumph. On that banner is inscribed *Free Trade; Low Duties; No Debt; Separation from Banks; Economy; Retrenchment and strict adherence to the Constitution.*"

VI.

While not strictly necessary for the vindication of my theme, it may not be wholly irrelevant to clear nullification from some misapprehension which prevails as to the basis of such a claim on the part of a state, and as to the legitimate and intended effects of such a right. In the public mind, in grave treatises,

in congressional speeches, it has been transformed into "a raw head and bloody bones" to frighten children and hysterical voters. Prior to the adoption of the Constitution and the consequent formation of the Union, citizens were subject to no control but that of their states, and could be to no other except by the act of the state itself. It was only by the ratification of the Constitution by the separate act of the state that its citizens became subject, in any manner, to the authority of the general government. Without this ratification by their own state, the citizen stood, and would have continued to stand, in the same relation to the Union, as do the subjects of any foreign power. Rhode Island was not represented in the Convention which framed the constitution, and after the ratification was treated for several years by Congress as a foreign state, and duties were imposed upon goods imported from Rhode Island into the Union. Ratification bound the state as a community, and it rested with a state, as a member of the Union, in her sovereign capacity in convention, to determine, as far as her citizens were concerned, the extent of the obligations she assumed; and if, in her opinion as a sovereign, a law of Congress was unconstitutional, to declare it null and void, and that declaration was obligatory on her citizens. The unconstitutional act is of itself void, because beyond the right and power of the government to enact, and no argument of expediency or necessity can validate. The contention was that the state, as related to herself, so far as her own citizens were concerned, was the judge of her own obligations, and being the authority which imposed the obligations, must determine their extent, and that this declaration was binding on the citizens who owed to her paramount allegiance. In itself, nullification is not a withdrawal from the Union; it is not to be *in* and *out* of the Union at the same time. That is a species of *ad captandum vulgus* misrepresentation. A state is, at all times, so long as its proper position is maintained, both in and out of the Union ;

in for all constitutional purposes, and *out* for all others; *in* to the extent of delegated powers, and *out* to the extent of the reserved, for the states are united to the extent of the delegated powers, and separated beyond that limit. The boundary betwixt the reserved and the delegated powers marks the limits of the Union. Nullification was a definitive declaration on the part of the sovereign state, made in due form, that an act of an agent, of the government of the compact, transcends the delegated power and is therefore void. The object was to confine Congress within the limits of granted power by arresting the acts transcending authority, not with the view of *resuming* the delegated power, of dissolving the Union, but to prevent the reserved powers from being *assumed*, and thus to preserve the Union by compelling the fulfillment of the object for which the trust was created. Nullification is not a daily medicine, but was applicable only when the trust powers had been injuriously exceeded. It is a motion in arrest of judgment, an appeal to the constituent members of the government for a reconsideration, a temperate preventive of unwise legislation, of dangerous usurpation of power, of fatal encroachments on the Constitution. It calls for a pause, takes a reckoning, inquires where we are. Instead of resisting legitimate authority, or diminishing the rightful power of the Union, the object is to preserve them and thereby the Union itself. Need it be argued before intelligent people that the Union, as a political entity, may be effectually destroyed by usurpation, by enlargement of powers, as by diminishing them; by consolidation, by centralization, as by absolving the allegiance of the citizens of a creating state, unless we mean by Union a mere concretion of inorganic elements, a government, independent, self-existing, unrelated to the states or the Constitution. In defending reserved powers against encroachments, nullification is not destructive, but conservative and preservative. The general recognition of the right of state interposition would, in a

great measure, if not altogether, supersede the necessity of its exercise, by impressing on parties and public officers and the movements of the government that moderation and justice so essential to harmony and peace in a country of such vast extent and diversity of interests as ours. If Congress be the supreme and final judge of the extent of powers reserved and delegated, then its discretion is the law and the Constitution is abrogated; the whole order of the Federal system is reversed and the General Government is the master and proprietor of the states. There is no better definition of despotism than a government of absolute, irresponsible majority, unchecked and unrestrained except by its own will. "It is idle, worse than idle," said the great Carolinian, "to attempt to distinguish, practically, between a government of unlimited powers and one professedly limited, but with an unlimited right to determine the extent of its powers." And hence, one rarely hears of a majority in Congress troubling itself about granted or forbidden powers. *Hoc volo, sic jubeo, sit pro ratione voluntas.*

The effect of state interposition should be to cause the government at Washington to abandon, for the time being, the disputed power, or to apply to the states themselves, the source of all political authority, for an additional grant. This would not be a revolutionary or forcible, but a peaceful expedient, admirably adapted to prevent disorders and to preserve and conserve that most remarkable feature of concurring majorities. Our system comprehends two distinct governments, the general and state, which, properly understood, constitute but one, the former representing the joint authority of the states in their confederate capacity, and the latter, that of each state separately. Powers are divided, all must concede, between the delegated and the reserved, the general and the state governments, and the powers reserved are reserved to the states respectively. "It will be difficult to imagine a system more happily constituted than our Federal

Republic — a system of state and general governments, so blended as to constitute one sublime whole ; the latter, having charge of interests common to all, and the former, those local and peculiar to each state. With such a system, let the Federal Government be confined rigidly to the few great objects for which it was instituted, leaving the states to contend in generous rivalry to develop, by the arts of peace, their respective resources ; and a scene of prosperity and happiness would follow heretofore unequalled on the globe."

VII.

Civil service reform has been, of late years, so much discussed, eliciting earnest advocacy and bitter hostility, it seems to be forgotten that in the senate, in 1826, 1835 and 1843, executive patronage was made the subject of exhaustive reports and spirited debates. In 1835, Calhoun submitted a report in which may be found a full and conclusive discussion of the evils and dangers of the spoils system and of "the cohesive power of public plunder." When offices, instead of being considered as public trusts to be conferred on the deserving, are regarded as the spoils of victory to be bestowed as rewards for partisan services, without respect to merit ; when it comes to be understood that all, who hold office, hold by tenure of partisan zeal and partisan service, it is easy to see that the certain, direct and inevitable tendency of such a state of things is to convert the entire body of those in office into corrupt and supple instruments of power, and to raise up a host of hungry, greedy and subservient partisans — "salaried dependents," as Lucian calls them — ready for every service, however base and corrupt. "Were a premium offered for the best means of extending to the utmost the power of patronage, to destroy the love of country and to substitute a spirit of subserviency and man-worship ; to encourage vice and discourage virtue ; and in a word to prepare for the subversion of liberty and the estab-

lishment of despotism, no scheme more perfect could be devised." Bringing a dangerous mass of private and personal interests into operation in all public elections and public questions, making the power and influence of Federal patronage an overmatch for the power and influence of state patronage, have had painful and menacing illustration in these latter days.

VIII.

After his efforts as Secretary of State, resulting subsequently and chiefly through his energetic and far-seeing statesmanship in the annexation of Texas and the defeat of the hostile machinations of Great Britain, and declining the mission to England offered by President Polk, Calhoun retired to private life, but the unfortunate pledge in the party platform to claim the whole territory of Oregon, then in dispute between Great Britain and the United States, caused a most irritating controversy, and war seemed inevitable. The country became alarmed, and the merchants in our great cities sent a message to the retired statesman begging him to return to the councils of the nation. In 1842, with unrivaled ability, he had sustained the Ashburton Treaty, which removed the causes of disagreement between the two contracting parties with reference to the northeastern boundary. The eyes of all interests and parties were now turned to the one man, hitherto equal to every emergency, as being competent to avert this imminent danger. He could not resist such appeals, threw himself into the breach, rallied the patriotism and good sense of the country, and forced the reopening of negotiations which soon adjusted the trouble to the satisfaction of both nations. To him was justly accredited the proud distinction and honor of saving us from a war with our best friend, about a matter so trivial that not one in thousands of our citizens could now state intelligently the cause of the mad agitation. Perhaps no more timely and substantial service

was ever rendered to our country. It is well to recall these adjustments and forget historic grievances and disputes and old prejudices, to reunite the sacred and natural ties of kinship, to strengthen the bonds of interest and alliance with a people between whom and ourselves there is a community of race, of language, of law, of literature, of religion, of ideals, of free institutions, of presumptions on the side of freedom, of responsibility for a true and ennobling civilization.

“O Englishmen — in hope and creed,
In blood and tongue our brothers!
We, too, are heirs of Rnnymede;
And Shakespeare’s fame and Cromwell’s deed
Are not alone our mother’s.”

With sublime courage he sought also to prevent an invasion of Mexico by our army, because he saw, with prophetic vision, that all hope of reforming the government and preserving the Constitution and Union of delegated powers would be blighted by the results of war with a weak neighbor and the consequent acquisition of foreign territory, which would inevitably lead to an embittered sectional struggle, imperiling the Union. Few occasions in his checkered career so filled him with terror, with apprehensions for the safety of the Union, and for the equality of the states as members of the great republic.

An original letter from Mr. Calhoun, written on the first of August, 1844, makes clear his opinions. “The whole tenor of my long public life contradicts the charge of being unfriendly to the Union, and every friend and acquaintance I have know it to be false. My life has been devoted to the service of the Union, and the constant and highest object of my ambition has been to preserve and perpetuate it, with our free, popular, federal system of government.”

John Randolph Tucker of Virginia related that at a dinner party in Washington, Bancroft stated in conversation that Calhoun was the original secessionist and responsible for the Civil War. To this statement Tucker took exception and said that in the month of

Calhoun's death he was invited to go and see the great statesman. To an inquiry whether anything could be done to save the Union, and whether the Missouri Compromise could not save it, Calhoun replied, "With my constitutional objections I could not vote for it, but I would acquiesce in it to save the Union." He was again asked what he saw in the future of the country, and his reply was, "Dark forebodings, and I should die happy if I could see the Union preserved." Bancroft inquired if Tucker had heard this reply of Calhoun, to which Tucker answered, yes, and then Bancroft stated, "I will never again repeat the charge I made against Mr. Calhoun here tonight."

It may be safely asserted that in the freedom of private intercourse, in his most confidential communications, in his public utterances, he was never known to express one opinion hostile to the Union.

IX.

As confuting the unquestionable historical statements and logical conclusions, it is affirmed that the war between the states made a different government, settling disputed questions adversely to the contention of the Southern states. In 1861, Congress declared that the war was to "preserve the Union with all the dignity, equality and rights of the several states unimpaired." War or force settles nothing *in foro conscientiae*, nothing of historic or scientific truth. The war between the states showed that the North and the South could furnish soldiers equal to any in the world for patience, endurance, patriotism, courage and sacrifices, and officers, including Grant and Lee, Sherman and Johnstons, Sheridan and Stuart, Thomas and Jackson, Farragut and Semmes, inferior to none who ever drew sword. Whatever judgment may finally prevail as to the expediency of the present war, the need of its initiation, undertaken to check the disorders and relieve the oppressions in Cuba, it has

developed a high citizenship, obscured offensive lines and sentiments of sectionalism, called out courageous exhibitions of patriotic purposes, illumined biography with valorous deeds, and cemented the bonds of national life. No one who knows Spain, proud, poor, self-satisfied, inert, decadent, dwelling contentedly in the past, can doubt the issue of her conflict with the tremendous resources of the United States in wealth, in intellect, quick adaptedness to emergencies, in compact patriotism of a united people, and in such illustrations of magnificent courage as displayed by the Vermonter and the Alabamian—by Dewey and Hobson. But what political questions were settled by the terrible conflict of 1861-1865? That is ascertainable only by reference to Amendments XIII, XIV and XV. They nationalized the government and broadened citizenship beyond what the fathers ever dreamed of. They emancipated the slaves and placed them upon equality of citizenship with the white people, compelled the seceding states to repudiate all obligations growing out of conflict with the United States, and eliminated secession as a state right or remedy by creating national citizenship, thus transferring paramount allegiance from the state to the general government. As a legitimate consequence, the right of state interposition to arrest usurpation by the Federal Government, whether by nullification or secession, has gone forever, and all granted powers are irrevocable by the states, and the general government has become practically the final judge of the measure and extent of the powers conferred upon it. Prior to the post-bellum amendments, the will of the states had not been formulated upon the distinct subject of national sovereignty. To the extent of these changes, the rights of states were impaired. Outside these amendments, "which make no change in the organic distribution of powers," the Constitution and the resulting Union, and the reserved powers of the states, and the delegated authority of the Federal Government, remain as and what they were in 1860. The

states, when they accepted the Constitution, agreed to a method of amendment, and to limitations upon the amendments. Having imposed upon themselves a form of government, it can be changed legitimately and authoritatively only in a way provided in the pact. Lincoln said, "Whenever they shall grow weary of the existing government, they have the constitutional right to amend it, or the revolutionary right to overthrow it." The power to amend is given to certain determinate bodies, and in these bodies *quoad hoc* rests the sovereignty. In the United States, the ultimate sovereign, the constitution-making power, is a "collegiate sovereign," made up of two-thirds of the two Houses of Congress and three-fourths of the legislatures or conventions. It is absurd to look elsewhere for the source of constitutional law. No provision has been made for changing our Constitution different from what is contained in Article V, a peculiarly American provision adopted by the fathers to meet future requirements. This restriction is not adverse to progress, to wise adaptations to environments, does not mean that our country and institutions are to be hindered by swaddling clothes of the last century. A Chicago paper speaks of larger population, of progress in invention, machinery, resources, and that we must be wise according to the exigencies and interests of the hour. So be it. Amendments are desirable, and over 1800 have been proposed in Congress. Changes should occur. The only question is how, by what process? By safe evolution, by the healthy and wise means of progress provided presciently in the Constitution, or by revolution, by usurpation, by the desire for aggrandizement on the part of the "fierce democratie." Let it be inscribed over doors of Congress and courts and the executive mansion that in America precedents do not make constitutions, and that a constitution violated is not a constitution abolished. President J. Q. Adams closes his defense of himself in the matter of the negotiation of Ghent by giving "solemn warning to the statesmen of the Union, in their conflict

with foreign powers through all future time, never to consider any of the liberties of the nation as abrogated by a war, or capable of being extinguished by any other agency than our own express renunciation."

X.

Since the war some new theories have been promulgated as to changes in the character and authority of the Federal Government. The doctrine of national political growth is applied, and a government, alterable only by prescribed methods, becomes flexible and elastic, so as to be molded by circumstances, by fluctuating public opinion, or supposed public interests. One law professor coolly sets aside the Tenth Amendment. Another defines state rights and powers such only as were granted or recognized by the Constitution. Another measures constitutional law, not by texts, but by *faits accomplis* and tests constitutional changes by two queries; were they in accordance with the standard of the times, have they lasted? These theories are revolutionary and efface the well-established distinction between a constitution and an ordinary statute. Nothing can be conceived more antipodal to the true end of our Federal, Constitutional, representative Republic. The Constitution becomes superfluous. Restraints and reservations are swept into desuetude, not innocuous. Oaths have no binding force. Whim, caprice, the mutable breath of the multitude, whatever fanaticism or hatred, or the vulgar enticements of jingoism or interest may suggest, whether in violation of treaty, despoiling foreign nations, creating fiat money, navigation laws, codfish bounties, tariff robberies, destruction of state autonomy, any injustice or outrage which ambition or greed or demagogism may make to appear popular, or secure a majority in Congress, supersedes the fundamental law. The Constitution is wiped out. Grants have no significance. Limitations are impotent. Instead of a stable, solemn, permanent, national will, we have hardly a rope of sand, and the

Constitution, as Jefferson feared, becomes "waste paper by construction," If our fathers made such a government, instead of deserving encomiums for wisdom and sagacity as statesmen and publicists, they were the veriest simpletons.

XI.

In the reprobation of secession and the "rebellion" and the misapprehension of what changes have been wrought, there is danger of fatal reaction from the true principles of the government to an approval of centralization which Gladstone said has been the curse of Ireland. Slavery and secession being eliminated from all future controversy, some matters can be looked at from a broad, patriotic view, without the disturbing influence of sectionalism. Centripetalism, drawing into the hands of the government a large part of the direct powers of control and administration, aggregation of authority in the central head, may have stimulated national pride and vanity and a coarse militarism, but it has not increased national happiness and contentment, nor promoted the general welfare. It has originated or intensified problems, difficult and apparently insoluble, arrayed capital against labor, the classes against the masses, stimulated "vast plutocratic combinations of incorporated wealth," excited foreign ill-will, and created perils which menace personal freedom, individual liberty and state autonomy. From frugality and economy our government has lapsed into "Billion Congresses," the most extravagant expenditures of the people's money, and a disposition, on the part of the states, as well as of persons, to look to a paternal government for protection and support. It was a cardinal maxim of Calhoun to keep the government poor, for the most fatal vices have come from a plethoric treasury. As Burke said in his attack on Lord North, *Magnum rectigal est parsimonia*. Auxiliary to this wasteful use of public money, a consequence and a cause of it, is the criminal use of money in

nominating conventions and in presidential and congressional elections, in paying election expenses and delivering votes to corporations. Enlarged executive patronage has been fastened upon the country, and unless checked and regulated the debasement and corruption of the community will proceed beyond cure. Excessive governmental intervention has become the bane of our system, and bounties, subsidies, pensions, rings, trusts, partnership in private business, break up old party lines and bring into passionate demands the pent up feelings of greed, envy, poverty, and distrust. A mysterious power residing in the state to make money and to direct profitable industries is inculcated by demagogues. State socialism and perversion of public taxation from its true function into an engine for the selfish profit of allied beneficiaries and combinations have had incalculable influence in fostering class legislation, creating inequalities of fortune, corrupting public life,* intrenching dishonesty in high places, banishing men of independent mind and character from the public councils, lowering the tone of national representation, blunting public conscience, creating false standards in the popular mind, familiarizing it with reliance upon state aid and guardianship in private affairs, divorcing ethics from politics, and placing politics upon the low level of a mercenary scramble.†

Under the infatuating influence of centralized power, Washington's advice against entangling alliance with foreign powers is disregarded, and interference with treaties and in foreign disputes finds advocacy in the press, the house, and the senate. A vicarious philanthropy is promoted and loud demands are made to take under our sheltering wings, as the custodians of the nations of the world, all who are suffer-

* Senator Teller said publicly that the Sherman Silver Purchase Act of July 14, 1890, was the result of a concession to, an agreement with, certain Silver Senators as an inducement to them to support the McKinley tariff.

† See Bayard's Edinburgh Speech in 1895, placed by the House of Representatives in the *Index Expurgatorius*.

ing from destitution, or persecution, or misgovernment. Jingoism is popular, and the propagandism of ideas, such as disgraced the French Revolution in 1792-3, becomes the quintessence of Americanism. As corrective of such fallacies, let us hear what the fathers said. Jefferson, in that matchless enumeration of the true principles of our government, in his Inaugural, emphasized "the support of the state governments in all their rights; the preservation of the general government in its whole *constitutional* vigor, as the sheet anchor of peace at home and safety abroad." Madison declared the purposes of the government to be "to support the Constitution, which is the cement of the Union, as well in its limitations as in its authorities; to respect the rights and authorities reserved to the states." It has been announced *ex cathedra* to be "the divine purpose that America should depart from her isolated position, and take her place among the foremost nations of the earth." Others, not assuming to speak as "the oracles of God," say, "We are going on to the Sandwich Islands and as much further as duty and destiny call." Whether we can adjust our constitutional, representative, federal system to the outlying, imperial provinces of Cuba, Porto Rico, Hawaii, and the Philippine Islands, and abandon our republican simplicity, a wiser man than I must decide. Unlike the French, Spanish, and other peoples, we may have the Roman and the English aptitude for colonization, but, certainly, colonial aggrandizement upsets, reverses, all the principles and traditions of the fathers. However that may be, manifest destiny, lust of territorial aggrandizement, or the irresistible logic of events is driving us from our historic policy of isolation, demanding, for the settlement of the political, ethical, and international questions that will grow out of these new complications, these enlarged responsibilities, this revolution in theory and policy of government, the wisest and most cultured statesmen. Our ancestors, with almost superhuman sagacity, devised a

scheme of governments, which has adjusted itself to every past expansion of territorial area, and it is beyond question that this system, carried out as originally devised, could cover North America, in impartial vigor, with justice, liberty, equality and fraternity. Consolidation, centralization, begets necessarily assumption of power, tyrannous and selfish interference with personal and local rights, and licenses hurtful appetites and wickedest passions. Holding the general government in legitimate bounds, allowing home rule, the watchfulness of self-management, and the discipline of local self-government, enlarges without weakening, and secures in just measure, the rights and liberties, the prosperity and happiness, which come from a well-ordered and wisely restrained government. It is the "*E Pluribus Unum*," the unity and harmony and strength of the federative whole.

The Declaration of Independence is the *magna charta* of human liberty, salutary alike for colonies and the mother country, unfolding, almost for the first time, in the history of the race, the possibilities of the development and enjoyment of the powers with which man has been endowed by a beneficent Creator. That governments derive their just powers from the consent of the governed, undermines all kingly and priestly absolutism, is the death-knell of all political and ecclesiastical tyranny and the assertion of liberty as the inalienable birthright of man. Our correlated federal and state governments, with freedom of religion, is America's contribution to the science of politics. "Distinct as the billows and one as the sea," is a misleading illustration of the true character of the system. The two governments, interdependent, each with distinct functions, move in their prescribed orbits, obedient to the laws of justice and right, and dispense order, equality, and freedom, without interference with the duty and prerogative of the other, and with the pre-adjusted harmony of the spheres. This blending of federative supremacy for national and foreign purposes, and of state sovereignty, home rule, for

constitution making and for local and personal matters, is the highest attainment of political wisdom, the most wonderful achievement ever devised by the brain and purpose of man. Let us, on this inspiring day, faithfully guard this American idea of free, representative, responsible government, and on some future Fourth of July, if not over "the federation of the world," at least from the Atlantic to the Pacific, from the Arctic to the Isthmus, inclusive, perhaps, of some adjacent islands, when cured of heterogeneous and unassimilative people, we may see "Old Glory" floating in the glad sunlight of liberty, with increasing stars and in ever brightening beauty.



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